

EDMUND G. BROWN JR., Attorney General  
of the State of California  
ROBERT MCKIM BELL  
Supervising Deputy Attorney General  
CHRIS LEONG, State Bar No. 141079  
Deputy Attorney General  
California Department of Justice  
300 South Spring Street, Suite 1702  
Los Angeles, California 90013  
Telephone: (213) 897-2575  
Facsimile: (213) 897-9395

Attorneys for Complainant

**BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D 2006 64721

ROBERT BAILES, PTA  
P.O. Box 5353  
Lancaster, California 93539-5353

**A C C U S A T I O N**

Physical Therapist Assistant License No. AT 262

Respondent.

Complainant alleges:

**PARTIES**

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California (Board), Department of Consumer Affairs.

2. On or about September 5, 1978, the Board issued Physical Therapist Assistant License Number AT 262 to Robert Bailes (Respondent). This license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2009, unless renewed.

**JURISDICTION**

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless

otherwise indicated.

4. Section 2609 of the Code states:

The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.

5. Section 2630 of the Code states:

It is unlawful for any person or persons to practice, or offer to practice, physical therapy in this state for compensation received or expected, or to hold himself or herself out as a physical therapist, unless at the time of so doing the person holds a valid, unexpired, and unrevoked license issued under this chapter.

Nothing in this section shall restrict the activities authorized by their licenses on the part of any persons licensed under this code or any initiative act, or the activities authorized to be performed pursuant to Article 4.5 (commencing with Section 2655) or Chapter 7.7 (commencing with Section 3500).

A physical therapist licensed pursuant to this chapter may utilize the services of one aide engaged in patient-related tasks to assist the physical therapist in his or her practice of physical therapy. "Patient-related task" means a physical therapy service rendered directly to the patient by an aide, excluding non-patient-related tasks. "Non-patient-related task" means a task related to observation of the patient, transport of the patient, physical support only during gait or transfer training, housekeeping duties, clerical duties, and similar functions. The aide shall at all times be under the orders, direction, and immediate supervision of the physical therapist. Nothing in this section shall authorize an aide to independently perform physical therapy or any physical therapy procedure. The board shall adopt regulations that set forth the standards and requirements for the orders, direction, and immediate supervision of an aide by a physical therapist. The physical therapist shall provide continuous and immediate supervision of the aide. The physical therapist shall be in the same facility as, and in proximity to, the location where the aide is performing patient-related tasks, and shall be readily available at all times to provide advice or instruction to the aide. When patient-related tasks are

1 provided to a patient by an aide, the supervising physical therapist shall, at some point  
2 during the treatment day, provide direct service to the patient as treatment for the patient's  
3 condition, or to further evaluate and monitor the patient's progress, and shall  
4 correspondingly document the patient's record.

5 The administration of massage, external baths, or normal exercise not a part of a  
6 physical therapy treatment shall not be prohibited by this section.

7 6. Section 2660 of the Code states:

8 The board may, after the conduct of appropriate proceedings under the  
9 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose  
10 probationary conditions upon any license, certificate, or approval issued under this chapter for  
11 unprofessional conduct that includes, but is not limited to, one or any combination of the  
12 following causes:

13 . . .

14 (i) Conviction of a violation of any of the provisions of this chapter or of the  
15 State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or  
16 assisting in or abetting the violating of, or conspiring to violate any provision or term of  
17 this chapter or of the State Medical Practice Act.

18 (j) The aiding or abetting of any person to violate this chapter or any regulations  
19 duly adopted under this chapter.

20 (k) The aiding or abetting of any person to engage in the unlawful practice of  
21 physical therapy.

22 7. Section 2655 of the Code states:

23 As used in this article:

24 (a) "Physical therapist" means a physical therapist licensed by the board.

25 (b) "Physical therapist assistant" means a person who meets the qualifications  
26 stated in Section 2655.3 and who is approved by the board to assist in the provision of  
27 physical therapy under the supervision of a physical therapist who shall be responsible for  
28 the extent, kind, and quality of the services provided by the physical therapist assistant.

1 (c) "Physical therapist assistant" and "physical therapy assistant" shall be deemed  
2 identical and interchangeable.

3 8. Section 2655.7 of the Code states:

4 Notwithstanding Section 2630, a physical therapist assistant may assist in the  
5 provision of physical therapy service provided the assistance is rendered under the supervision of  
6 a physical therapist licensed by the board.

7 9. California Code of Regulations, Title 16, section 1398.44, states:

8 A licensed physical therapist shall at all times be responsible for all physical  
9 therapy services provided by the physical therapist assistant. The supervising physical  
10 therapist has continuing responsibility to follow the progress of each patient, provide  
11 direct care to the patient and to assure that the physical therapist assistant does not  
12 function autonomously. Adequate supervision shall include all of the following:

13 (a) The supervising physical therapist shall be readily available in person or by  
14 telecommunication to the physical therapist assistant at all times while the physical  
15 therapist assistant is treating patients. The supervising physical therapist shall provide  
16 periodic on site supervision and observation of the assigned patient care rendered by the  
17 physical therapist assistant.

18 (b) The supervising physical therapist shall initially evaluate each patient and  
19 document in the patient record, along with his or her signature, the evaluation and when  
20 the patient is to be reevaluated.

21 (c) The supervising physical therapist shall formulate and document in each  
22 patient's record, along with his or her signature, the treatment program goals and plan  
23 based upon the evaluation and any other information available to the supervising physical  
24 therapist. This information shall be communicated verbally, or in writing by the  
25 supervising physical therapist to the physical therapist assistant prior to initiation of  
26 treatment by the physical therapist assistant. The supervising physical therapist shall  
27 determine which elements of the treatment plan may be assigned to the physical therapist  
28 assistant. Assignment of these responsibilities must be commensurate with the

1 qualifications, including experience, education and training, of the physical therapist  
2 assistant.

3 (d) The supervising physical therapist shall reevaluate the patient as previously  
4 determined, or more often if necessary, and modify the treatment, goals and plan as  
5 needed. The reevaluation shall include treatment to the patient by the supervising  
6 physical therapist. The reevaluation shall be documented and signed by the supervising  
7 physical therapist in the patient's record and shall reflect the patient's progress toward the  
8 treatment goals and when the next reevaluation shall be performed.

9 (e) The physical therapist assistant shall document each treatment in the patient  
10 record, along with his or her signature. The physical therapist assistant shall document in  
11 the patient record and notify the supervising physical therapist of any change in the  
12 patient's condition not consistent with planned progress or treatment goals. The change in  
13 condition necessitates a reevaluation by a supervising physical therapist before further  
14 treatment by the physical therapist assistant.

15 (f) Within seven (7) days of the care being provided by the physical therapist  
16 assistant, the supervising physical therapist shall review, cosign and date all  
17 documentation by the physical therapist assistant or conduct a weekly case conference  
18 and document it in the patient record. Cosigning by the supervising physical therapist  
19 indicates that the supervising physical therapist has read the documentation, and unless  
20 the supervising physical therapist indicates otherwise, he or she is in agreement with the  
21 contents of the documentation.

22 (g) There shall be a regularly scheduled and documented case conference between  
23 the supervising physical therapist and physical therapist assistant regarding the patient.  
24 The frequency of the conferences is to be determined by the supervising physical therapist  
25 based on the needs of the patient, the supervisory needs of the physical therapist assistant  
26 and shall be at least every thirty calendar days.

27 (h) The supervising physical therapist shall establish a discharge plan. At the time  
28 of discharge, or within 7 (seven) days thereafter, a supervising physical therapist shall

1 document in the patient's record, along with his or her signature, the patient's response to  
2 treatment in the form of a reevaluation or discharge summary.”

3 10. California Code of Regulations, Title 16, section 1399, states:

4 A physical therapy aide is an unlicensed person who assists a physical therapist  
5 and may be utilized by a physical therapist in his or her practice by performing nonpatient  
6 related tasks, or by performing patient related tasks.

7 (a) As used in these regulations:

8 (1) A “patient related task” means a physical therapy service rendered directly to  
9 the patient by an aide, excluding nonpatient related tasks as defined below.

10 (2) A “nonpatient related task” means a task related to observation of the patient,  
11 transport of patients, physical support only during gait or transfer training, housekeeping  
12 duties, clerical duties and similar functions.

13 (b) “Under the orders, direction and immediate supervision” means:

14 (1) Prior to the initiation of care, the physical therapist shall evaluate every patient  
15 prior to the performance of any patient related tasks by the aide. The evaluation shall be  
16 documented in the patient's record.

17 (2) The physical therapist shall formulate and record in the patient's record a  
18 treatment program based upon the evaluation and any other information available to the  
19 physical therapist, and shall determine those patient related tasks which may be assigned  
20 to an aide. The patient's record shall reflect those patient related tasks that were rendered  
21 by the aide, including the signature of the aide who performed those tasks.

22 (3) The physical therapist shall assign only those patient related tasks that can be  
23 safely and effectively performed by the aide. The supervising physical therapist shall be  
24 responsible at all times for the conduct of the aide while he or she is on duty.

25 (4) The physical therapist shall provide continuous and immediate supervision of  
26 the aide. The physical therapist shall be in the same facility as and in immediate  
27 proximity to the location where the aide is performing patient related tasks, and shall be  
28 readily available at all times to provide advice or instruction to the aide. When patient

1 related tasks are provided a patient by an aide the supervising physical therapist shall at  
2 some point during the treatment day provide direct service to the patient as treatment for  
3 the patient's condition or to further evaluate and monitor the patient's progress, and so  
4 document in the patient's record.

5 (5) The physical therapist shall perform periodic re-evaluation of the patient as  
6 necessary and make adjustments in the patient's treatment program. The re-evaluation  
7 shall be documented in the patient's record.

8 (6) The supervising physical therapist shall countersign with their first initial and  
9 last name, and date all entries in the patient's record, on the same day as patient related  
10 tasks were provided by the aide.

11 11. Section 2661.5 of the Code states:

12 (a) In any order issued in resolution of a disciplinary proceeding before the board,  
13 the board may request the administrative law judge to direct any licensee found guilty of  
14 unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable  
15 costs of the investigation and prosecution of the case.

16 (b) The costs to be assessed shall be fixed by the administrative law judge and  
17 shall not in any event be increased by the board. When the board does not adopt a  
18 proposed decision and remands the case to an administrative law judge, the  
19 administrative law judge shall not increase the amount of the assessed costs specified in  
20 the proposed decision.

21 (c) When the payment directed in an order for payment of costs is not made by  
22 the licensee, the board may enforce the order of payment by bringing an action in any  
23 appropriate court. This right of enforcement shall be in addition to any other rights the  
24 board may have as to any licensee directed to pay costs.

25 (d) In any judicial action for the recovery of costs, proof of the board's decision  
26 shall be conclusive proof of the validity of the order of payment and the terms for  
27 payment.

28 (e) (1) Except as provided in paragraph (2), the board shall not renew or reinstate

1 the license or approval of any person who has failed to pay all of the costs ordered under  
2 this section.

3 (2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally  
4 renew or reinstate for a maximum of one year the license or approval of any person who  
5 demonstrates financial hardship and who enters into a formal agreement with the board to  
6 reimburse the board within that one year period for those unpaid costs.

7 (f) All costs recovered under this section shall be deposited in the Physical  
8 Therapy Fund as a reimbursement in either the fiscal year in which the costs are actually  
9 recovered or the previous fiscal year, as the board may direct.

#### 10 FIRST CAUSE FOR DISCIPLINE

11 (Aiding and Abetting the Unlawful Practice of Physical Therapy)

12 12. Respondent is subject to disciplinary action under Business and  
13 Professions Code sections 2630 and 2660, subdivisions (i), (j) and (k), and California Code of  
14 Regulations, Title 16, sections 1398.44, and 1399, in that he aided and abetted the unlicensed  
15 practice of physical therapy by a physical therapy aide.

16 13. Respondent is employed as a physical therapy assistant at the California  
17 City location of West Point Physical Therapy, which is owned by Grace Marzocchetti, a licensed  
18 physical therapist. West Point Physical Therapy has two locations, one in California City and  
19 one in Palmdale, California. Tiffany Polycen (Polycen), a physical therapy aide, is also  
20 employed at the California City location which is open on Mondays, Wednesdays and Fridays.  
21 Ezequiel Marzocchetti (E. Marzocchetti) is the physical therapist employed by West Point  
22 Physical Therapy.

23 14. On or about April 19, 2006, the Board's investigator and the Board's  
24 expert interviewed respondent at the California City location of West Point Physical Therapy.  
25 Respondent stated that the physical therapist E. Marzocchetti came to the California City location  
26 on Mondays to conduct initial evaluations of new patients, review and co-sign patient charts, and  
27 to discuss respondent's ongoing treatment of patients. Respondent stated that he performed all  
28 treatments after the initial evaluations, including modalities, manual therapy and therapeutic



1 exercises. He performed patient discharge evaluations. He reviewed new prescriptions and  
2 changed the patients' treatment plans. The physical therapist E. Marzocchetti supervised him  
3 telephonically, with no formal case conferences. In one instance, respondent received a new  
4 prescription from the physician of patient B.H. Respondent changed the treatment of the patient,  
5 without formal communication with the physical therapist. Respondent also stated that at times  
6 the physical therapy aide Polycen assisted him by administering ultrasound, providing massages,  
7 and applying heat packs. Respondent stated that he supervised Polycen.

8           15. On or about April 19, 2006, the Board's investigator and the Board's  
9 expert interviewed the physical therapist E. Marzocchetti at the Palmdale office location.  
10 E. Marzocchetti stated that he is physically present at the California City office a half-day on  
11 Mondays where he performs initial evaluations, administers some treatments, co-signs charts,  
12 and supervises respondent and the physical therapy aide Polycen. E. Marzocchetti stated that  
13 respondent provides most of the physical therapy treatments and performs tests and  
14 measurements for reevaluations, and prepares discharge evaluations. E. Marzocchetti's  
15 supervision of respondent is done on his half-day Monday visits and is also done telephonically,  
16 but is not documented. E. Marzocchetti also acknowledged that the physical therapy aide  
17 Polycen administers heat packs, ultrasound and massage to patients without his direct  
18 supervision, and that respondent supervised Polycen.

19           16. On or about April 19, 2006, the Board's investigator and the Board's  
20 expert interviewed the physical therapy aide Polycen at the California City location of West Point  
21 Physical Therapy. Polycen stated that her primary supervisor was respondent. She admitted that  
22 she applied heat packs, and performed ultrasound and massage, without instruction or  
23 communication from the licensed physical therapist. Polycen also admitted that she did  
24 document the subjective evaluation in the daily notes at times.

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1                   17.     Respondent aided and abetted the unlicensed practice of physical therapy  
2 by a physical therapy aide as follows:

3                                   Patient L. H.<sup>1</sup>

4                   A.     From about August 10 through 31, 2005, respondent and the physical  
5 therapy aide provided treatments to Patient L.H. There was no documentation in the  
6 record that the physical therapist directly and immediately supervised the physical therapy  
7 aide on August 10, 12, 15, 17, 22, 24, and 31, 2005, the dates the aide provided treatment.  
8 Pursuant to statements made by respondent, the physical therapy aide and the physical  
9 therapist, as referenced above in Paragraphs 14 through 16 and incorporated herein,  
10 respondent supervised the physical therapy aide.

11                                   Patient J.S.

12                   B.     From about September 21 through October 31, 2005, respondent and the  
13 physical therapy aide provided treatments to patient J.S. There was no documentation in  
14 the record that the physical therapist directly and immediately supervised the physical  
15 therapy aide on September 26, 28, and on October 3, 10, and 31, 2005, the dates the aide  
16 provided treatment. Pursuant to statements made by respondent, the physical therapy aide  
17 and the physical therapist, as referenced above in Paragraphs 14 through 16 and  
18 incorporated herein, respondent supervised the physical therapy aide.

19                                   Patient M.M.

20                   C.     From about September 14 through November 4, 2005, respondent and the  
21 physical therapy aide provided treatments to Patient M.M. There was no documentation  
22 in the record that the physical therapist directly and immediately supervised the physical  
23 therapy aide on September 14, 16, 26, 28, 30, and on October 3, 10, 17, and 21, 2005, the  
24 dates the aide provided treatment. Pursuant to statements made by respondent, the  
25 physical therapy aide and the physical therapist, as referenced above in Paragraphs 14  
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27                   1. For privacy, the patients in the Accusation will be identified by their initials. The full  
28 names will be disclosed to respondent upon timely request for discovery pursuant to  
Government Code section 11507.6.

1 through 16 and incorporated herein, respondent supervised the physical therapy aide.

2 Patient E.T.

3 D. From about March 10 through 24, 2006, respondent and the physical  
4 therapy aide provided treatments to Patient E.T. There was no documentation in the  
5 record that the physical therapist directly and immediately supervised the physical therapy  
6 aide on March 15, 16, 20, 22, and 24, 2006, the dates the physical therapy aide treated the  
7 patient. Pursuant to statements made by respondent, the physical therapy aide and the  
8 physical therapist, as referenced above in Paragraphs 14 through 16 and incorporated  
9 herein, respondent supervised the physical therapy aide.

10 Patient L.Y.

11 E. From about March 15 through April 14, 2006, respondent and the physical  
12 therapy aide provided treatments to Patient L.Y. There was no documentation in the  
13 record that physical therapist directly and immediately supervised the physical therapy  
14 aide on March 17, 22, 29, and April 3, 2006, the dates the physical therapy aide treated  
15 the patient. Pursuant to statements made by respondent, the physical therapy aide and the  
16 physical therapist, as referenced above in Paragraphs 14 through 16 and incorporated  
17 herein, respondent supervised the physical therapy aide.

18 Patient C.F.

19 F. On or about April 14, 2006, respondent and the physical therapy aide  
20 provided treatment to Patient C.F. There was no documentation in the record that the  
21 physical therapist directly and immediately supervised the physical therapy aide on April  
22 14, 2006, the date the aide treated the patient. Pursuant to statements made by  
23 respondent, the physical therapy aide and the physical therapist, as referenced above in  
24 Paragraphs 14 through 16 and incorporated herein, respondent supervised the physical  
25 therapy aide.

26 Patient R.W.

27 G. From April 5 through 17, 2006, respondent and the physical therapy aide  
28 provided treatments to Patient R.W. There was no documentation in the record that the

1 physical therapist directly and immediately supervised the physical therapy aide on April  
2 10, 12, 14, and 17, 2006, the dates the aide treated the patient. Pursuant to statements  
3 made by respondent, the physical therapy aide and the physical therapist, as referenced  
4 above in Paragraphs 14 through 16 and incorporated herein, respondent supervised the  
5 physical therapy aide.

6 Patient W.C.

7 H. From about April 5 through 17, 2006, respondent and the physical therapy  
8 aide provided physical therapy treatments to Patient W.C. There was no documentation  
9 in the record that the physical therapist directly and immediately supervised the physical  
10 therapy aide on April 12, and 17, 2006, the dates the aide treated the patient. Pursuant to  
11 statements made by respondent, the physical therapy aide and the physical therapist, as  
12 referenced above in Paragraphs 14 through 16 and incorporated herein, respondent  
13 supervised the physical therapy aide.

14 Patient B.H.

15 I. From about April 5 through 17, 2006, respondent and the physical therapy  
16 aide provided physical therapy treatments to Patient B.H. There was no documentation in  
17 the record that the physical therapist directly and immediately supervised the physical  
18 therapy aide on April 10, 14, and 17, 2006, the dates the aide treated the patient. Pursuant  
19 to statements made by respondent, the physical therapy aide and the physical therapist, as  
20 referenced above in Paragraphs 14 through 16 and incorporated herein, respondent  
21 supervised the physical therapy aide.

22 SECOND CAUSE FOR DISCIPLINE

23 (Unprofessional Conduct)

24 18. Respondent is subject to disciplinary action under Code section 2660 and  
25 California Code of Regulations, Title 16, section 1398.44, in that he engaged in unprofessional  
26 conduct. The facts and circumstances set forth above in Paragraph 17 of this Accusation are  
27 incorporated herein by reference.

28 A. Respondent prepared the discharge summaries for Patient D.L. dated

1 September 7, 2005, Patient L.H. dated August 31, 2005, Patient J.S. dated November 11,  
2 2005, and Patient E.T. dated March 24, 2006, when it was the responsibility of the  
3 physical therapist to prepare the discharge summary.

4 B. On March 30, 2006, the Patient L.Y.'s physician wrote a new physical  
5 therapy prescription indicating the patient's neck as a treatment area. On April 5, 2006,  
6 the treatment notes prepared by respondent made reference to the patient's neck area.  
7 Respondent did not communicate with the physical therapist regarding the change in  
8 prescription. Respondent treated the patient before the physical therapist reevaluated the  
9 patient.

10 C. On April 12, 2006, Patient B.H.'s physician wrote a new physical therapy  
11 prescription, "Commence from lt shoulder." The treatment notes written by respondent  
12 on April 14 , 2006, refer to the physician's prescription. Respondent did not  
13 communicate with the physical therapist regarding the new prescription. Respondent  
14 treated the patient before the physical therapist reevaluated the patient.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Physical Therapist Assistant License Number AT 262 issued to Robert Bailes;

2. Ordering Robert Bailes to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.5; and

3. Taking such other and further action as deemed necessary and proper.

DATED: August 29, 2007

Original Signed By:  
STEVEN K. HARTZELL  
Executive Officer  
Physical Therapy Board of California  
Department of Consumer Affairs  
State of California  
Complainant

LA2006503396

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